

No. 1197

24

FILED

APR 24 1945

CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF
THE UNITED STATES

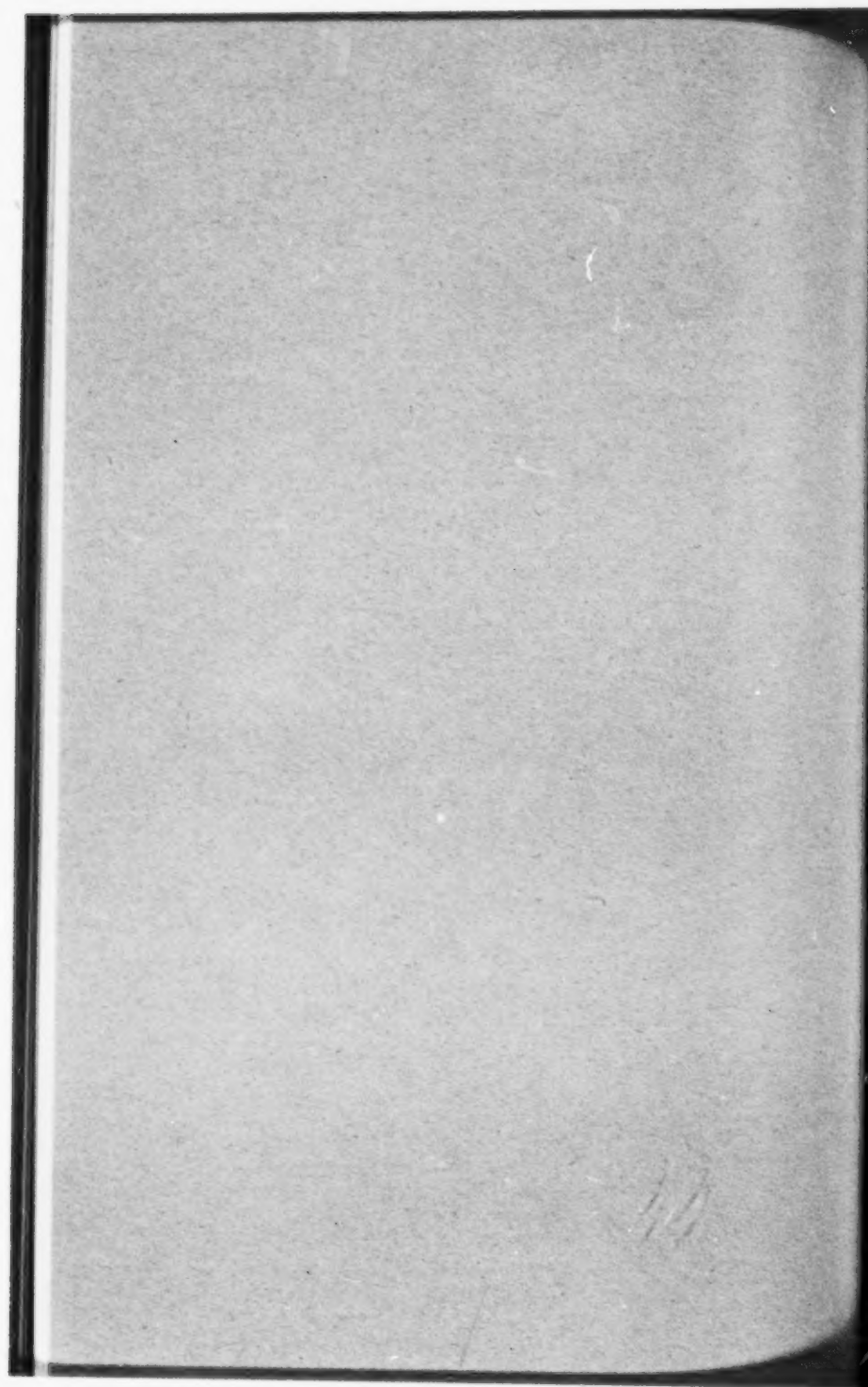
MIAMI BRIDGE COMPANY,
a Florida Corporation,
Petitioner,

vs.

THE RAILROAD COMMISSION
OF THE STATE OF FLORIDA,
Respondent.

Petition for
Certiorari.

Mitchell D. Price,
610 Biscayne Building,
Miami 32, Florida.
Attorney for Petitioner.



IN THE SUPREME COURT OF
THE UNITED STATES

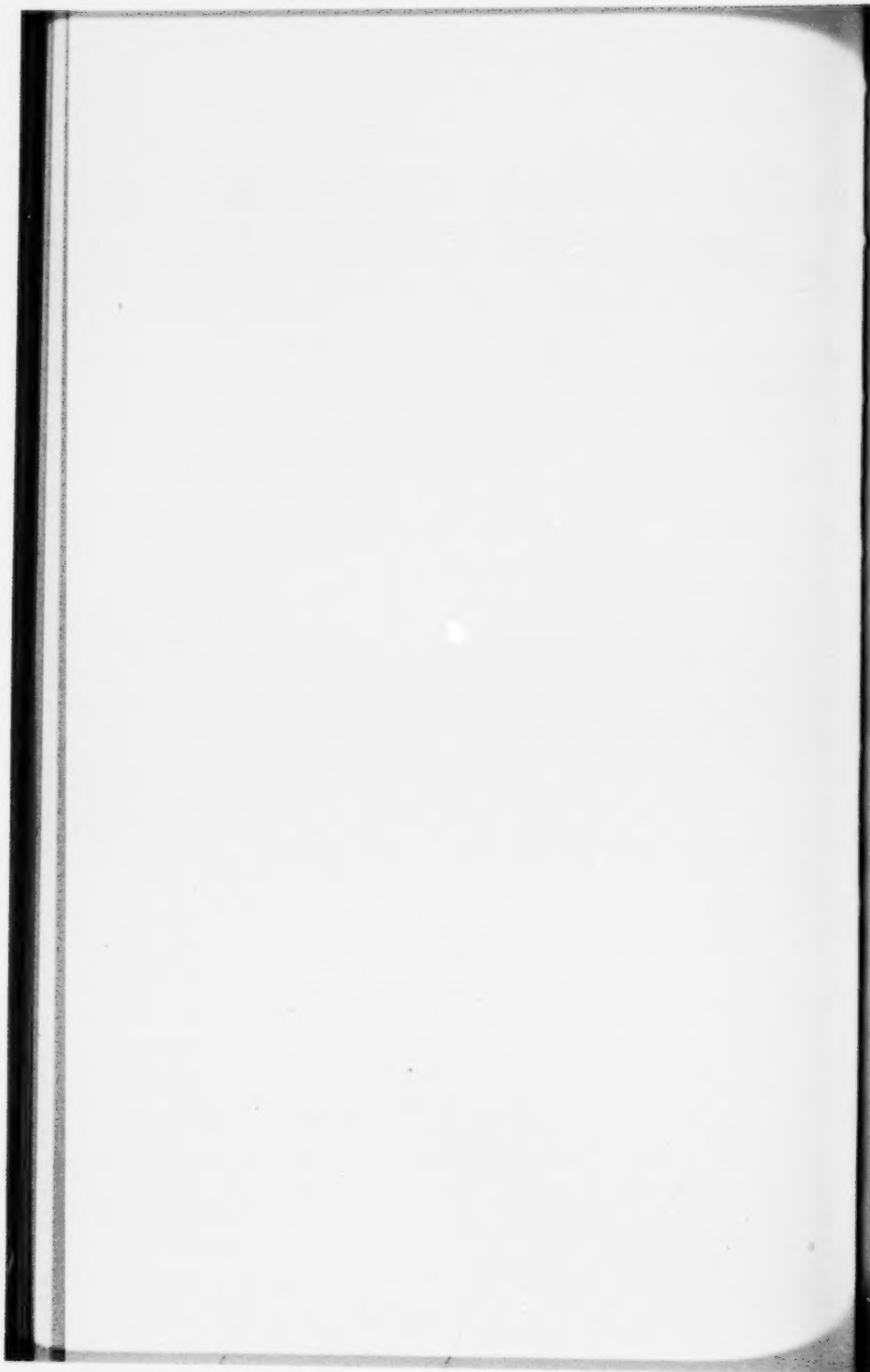
MIAMI BRIDGE COMPANY,
a Florida Corporation,
Petitioner,

vs.

THE RAILROAD COMMISSION
OF THE STATE OF FLORIDA,
Respondent.

Index to Exhibits
Attached to
Petition.

	Page
Copy of Chapter 10,497, Special Acts of 1925, Exhibit "A"	10
Copy of Chapter 21,743, Acts of 1943, Exhibit "B"	19
Copy of Chapter 347, Compiled Acts of 1941, Exhibit "C"	22



IN THE SUPREME COURT OF THE UNITED STATES

MIAMI BRIDGE COMPANY,
a Florida Corporation,
Petitioner,

vs.

THE RAILROAD COMMISSION
OF THE STATE OF FLORIDA,
Respondent.

**Petition for
Certiorari.**

SUMMARY STATEMENT OF MATTERS INVOLVED

Your petitioner respectfully shows unto this Honorable Court that it is the owner and holder of a toll road and bridge known as the VENETIAN CAUSEWAY extending across Biscayne Bay between the City of Miami and the City of Miami Beach, in Dade County, Florida; that its ownership and right to assess and collect toll are based upon Chapter 10,497 enacted by the Legislature of the State of Florida in 1925 and the acceptance and full compliance with the terms of said act. Such ownership and right to collect toll within the limitations of said chapter have been judicially established by the Supreme Court of the State of Florida.

Petitioner further shows unto the Court that The Miami Beach Railway Company, a corporation organ-

ized under the laws of the State of Florida, engaged in the business of operating busses for hire between the cities of Miami and Miami Beach, had previously used one of three free public causeways built by Dade County, Florida, connecting the City of Miami and the City of Miami Beach, but on or about the 14th day of October, 1941, said Railway Company conceived the idea of using the toll bridge constructed and operated by the petitioner and its predecessors in title, known as the Venetian Causeway, but refused to pay the rate of toll charged by the petitioner herein, to-wit, 25c per bus for each one-way bus passage over said bridge; that the busses operated by The Miami Beach Railway Company carry from forty to fifty passengers and when filled weigh between ten and fifteen thousand pounds, and the operation thereof causes great friction, wear and tear upon petitioner's causeway; that litigation was first begun in the Circuit Court in and for Dade County, Florida, by The Miami Beach Railway Company, who sought to prohibit the Miami Bridge Company from collecting any toll, or else to compel them to reduce their toll; that the Railway Company was (and still is) collecting 10c for each passenger hauled by bus one way across said bridge; that said litigation was determined by the Supreme Court of the State of Florida in the case of MIAMI BRIDGE COMPANY vs. THE MIAMI BEACH RAILWAY COMPANY, reported in 12 Southern Reporter (2), page 438; that in said decision the Supreme Court of Florida held that The Miami Bridge Company owned and had the right to operate said toll bridge and to fix and charge reasonable toll for the use thereof.

That thereafter, to-wit, at its 1943 session, the Legis-

lature of the State of Florida enacted Chapter 21,743, which purported to amend Section 347.08 of Chapter 347 of the Florida Statutes, as codified in 1941; that Chapter 347 of said compiled statutes contained 25 sections and in its entirety embraced the Florida law relating to ferries, toll bridges, dams and log ditches; that said Chapter 347 at the time of the amendment contained and still contains, a section known as Section 347.20, reading as follows, to-wit:

"Vested rights not impaired. Nothing in this chapter shall affect or impair any right or privilege belonging to any individual or corporation by virtue of any law of this state."

That Section 347.20 was not changed, altered or modified by the passage of Chapter 21,743, and Sections 347.08 and 347.20 should be read and construed as essential parts of one act.

That after the passage of Chapter 21,743, The Florida Railroad Commission, upon petition filed by The Miami Beach Railway Company, advised the petitioner herein that it intended to take over and regulate the operation of the Venetian Causeway and to fix the tolls to be charged each person or vehicle using the same; that the petitioner herein protested the action of The Railroad Commission and filed a motion with The Railroad Commission to dismiss said action, and also filed five pleas in Bar to the jurisdiction of said Railroad Commission, denying its right to regulate the operation and fix the tolls to be charged for the use of its bridge. The gist of petitioner's constitutional grounds relied upon

for reversal are set up in Pleas numbers one, two and three contained in transcript at paegs 17, 20 and 23, respectively.

Reason Relied Upon for the Allowance of Writ of Certiorari

The five pleas, so filed with The Railroad Commission as aforesaid, in the aggregate, set up two fundamental defenses: (1) they alleged that Chapter 21,743 was unconstitutional if applied to the Venetian Causeway, because it impaired the obligation of a judicially validated contract; (2) that the phraseology of said act and the phraseology of the chapter of which it became a part, prohibited it from applying to the Venetian Causeway, and if so applied it would deprive the petitioner of vested rights without consideration and without due process of law. Stress was laid in said motion and pleas and in the briefs filed with The Railroad Commission and later with the Supreme Court of the State of Florida on Section 10, Article 1, of the Constitution of the United States, wherein the following language is used:

"No state shall . . . pass any . . . law impairing the obligation of contracts . . ."

Said pleas also stressed the defense that Chapter 21,743 did not apply to the Venetian Causeway, because such application would impair vested rights contrary to Section 347.20, hereinbefore quoted. Said pleas definitely alleged that the petitioner and every stockholder and every bond holder, interested in the Miami Bridge Company possessed vested rights in and to said bridge and

the operation thereof; **Thereafter The Railroad Commission of the State of Florida handed down a final judgment as to the matters in dispute in which they denied petitioner's motion to dismiss and struck petitioner's pleas in bar from the record**, thereby rendering a final judgment upon three questions, to-wit:

1. That Chapter 21,743, enacted by the Legislature of 1943 did apply to the Venetian Causeway, and that said chapter was valid and constitutional.

2. That the passage of Chapter 21,743 did not impair the contract between the State of Florida and the petitioner herein.

3. That discrimination was disclosed by the pleadings based exclusively upon a comparison between the rate charged by the Miami Bridge Company to The Miami Beach Railway Company for the passage of its busses and the rate charged to a jitney company operating under a former contract, for the passage of its five passenger automobiles; that said discrimination in effect created such an emergency that public health, public welfare, public safety and public morals, (not shown by any allegation or proof to have been affected), were jeopardized and authorized the Legislature to invoke the aid of the police power of the state to avoid public disaster and thus prevent the passage of Chapter 21,743 being in conflict with the Federal Constitution.

The three questions above have been finally adjudicated and determined; first, by The Railroad Commission adversely to the petitioner herein, and second, by

the judgment of the Supreme Court of the State of Florida, which was rendered on the 19th day of December, 1944, wherein said court affirmed the action and judgment of The Florida Railroad Commission and authorized The Railroad Commission "to fix tolls and regulate the operation of the Venetian Causeway owned and operated by the petitioner." That the only subsequent judgment that could be handed down by The Railroad Commission, would be a judgment fixing the amount of toll to be collected, which question was not an issue in the original action. That the question decided by the Railroad Commission and affirmed by the Supreme Court of the State of Florida cannot again be reviewed and their findings reversed by any tribunal save and except this Honorable Court. That the issues raised in said case are of vast importance, not only to the petitioner herein, but to every person, firm or corporation engaged in any way in serving the public. That to sustain Chapter 21,743 and apply same to the Miami Bridge Company, is equivalent to saying, Section Ten of Article 1 of the Federal Constitution does not apply where any person or corporation seeking to advance his or its own private interest without any legal foundation and without rendering any proof shouts "discrimination"—"police power."

Discrimination between two corporations on a question of rates not involving the general public has never before been asserted by the Supreme Court of Florida as an adequate ground for the intervention of police power.

Petitioner further alleges that the application of Chapter 21,743 as enacted by the Florida Legislature in

1943 to the Venetian Causeway would deprive the petitioner herein not only of its right to fix tolls and charges for the use of said causeway but also of its right to manage and control said bridge and to determine "the uses and hours for keeping open" and would vest in the Railroad Commission the right to fix tolls and charges and make rules and regulations respecting the operation of said bridge, including the control of its bookkeeping system, all of which is in direct conflict with that portion of the federal Constitution upon which petitioner relies which prohibits the passage of any act by any state legislature impairing the obligation of a valid contract. The application of Chapter 21,743 to petitioner's bridge would place the control of the bridge in the hands of non-residents who would not be acquainted with the employees nor with local conditions.

The opinion sought to be set aside by this petitioner was dated the 19th day of December, 1944, and on the 3rd day of January, 1945, **the petitioner herein filed a motion for a rehearing** which was duly considered by the Supreme Court of Florida, **and by it denied on the 26th day of January, 1945.**

Petitioner delivers herewith printed and certified copies of the original record of the proceedings before The Railroad Commission, as transmitted to the Supreme Court of the State of Florida, together with the Transcript of all proceedings which transpired before the Supreme Court of the State of Florida.

To facilitate an examination of the questions presented by this petition, the petitioner attaches hereto a

true copy of Chapter 10,497, upon which petitioner bases its claim of title; said copy is marked for identification as Petitioner's Exhibit "A".

Petitioner, for the same purpose, also attaches hereto a copy of Chapter 21,743, enacted by the Legislature of the State of Florida in 1943. Said instrument is marked for identification as Petitioner's Exhibit "B".

Petitioner also attaches hereto a copy of Chapter 347 of the 1941 Compiled Acts, showing said Chapter as it existed at the time of the passage of Chapter 21,743. Said instrument is identified as Petitioner's Exhibit "C." Special attention is directed to Section 347.20.

Petitioner refers to a copy of the final judgment rendered by the Supreme Court of the State of Florida on the 19th day of December, 1944, shown in Transcript at page fifty (50).

The Motion for a Rehearing, filed with the Supreme Court of the State of Florida on the 3rd day of January, 1945, and **the Order denying same, dated the 26th day of January, 1945**, are made a part of the Transcript of Record, (transcript pages 61 and 68 respectively) delivered with this Petition.

WHEREFORE, in view of the premises, petitioner prays for a Writ of Certiorari to be issued from the Supreme Court of the United States of America to the Supreme Court of the State of Florida, directing said Court to send up the record in the case of the Miami Bridge Company vs. The Railroad Commission of Florida,

to permit this Court to review the decision of the Supreme Court of the State of Florida; that said process be made returnable in accordance with the rules and practice of this Honorable Court, and petitioner prays for the issuance of such other process as is usual and proper under the circumstances; and petitioner further prays that the Court will enter an order granting petitioner's application for the Writ of Certiorari; that the Court will examine the certified copy of the transcript now on file in this Court and direct that said Transcript of the Record heretofore filed by the petitioner and tendered with this Petition shall be treated by this Honorable Court as though sent up by the Supreme Court of the State of Florida in response to a formal writ.

Respectfully submitted,

Myra E. Hillbom
Attorney for Petitioner.

MIAMI BRIDGE COMPANY,

By *L. L. Hillbom*
President.

L. L. HILLBOM being duly sworn deposes and says that she is President of the Miami Bridge Company, a Florida corporation, and that the allegations and statements contained in the petition for Certiorari are true.

L. L. Hillbom

SUBSCRIBED AND SWORN TO before me this

21st day of April, A. D. 1945.

Gladys Bandy
Notary Public, State of Fla. at Large.

My Commission expires 6/21/48

(Petitioner's Exhibit "A")

CHAPTER 10497 SPECIAL ACTS

Regular Session, 1925.

LEGISLATIVE ACT

AN ACT to encourage and authorize the construction, maintenance and operation of roadways, bridges, viaducts and fills, including approaches thereto, over, across or through the waters and submerged lands of that part of Bay Biscayne lying North of the existing County Causeway, connecting Miami and Miami Beach, in Dade County, Florida; to maintain and operate the same as toll roads; regulating the operation thereof and prescribing tolls to be collected thereon; granting the right to construct thereon concrete arches, trestles, draw-bridges, docks, wharves, toll houses, toll gates, depots and other necessary buildings; providing for the purchase of said roadways, when completed, by the County of Dade; and providing for a certificate of authority from the Secretary of State.

WHEREAS, the intimate, business and social relations existing between the people on the East and West shores of Biscayne Bay and the islands in Biscayne Bay, in Dade Conuty, in the State of Florida, render it desirable and important for the proper development of the said property and for the convenience of all of the people of these communities that additional lines of transportation and communication across said Biscayne Bay North of the existing County Causeway connecting Miami and Miami Beach, Florida, or between islands now existing or hereafter to be constructed, than now exist, should be constructed, opened and maintained; and

WHEREAS, to materially shorten the distance between given points on the opposite sides of the said Bay, and between islands now existing or hereafter to be constructed, will require the construction of roadways, bridges, viaducts and fills, including the approaches thereto, of approximately two to three miles or more in length over and across the waters of said Bay Biscayne; and

WHEREAS, it is estimated that the cost of properly constructing and equipping such roadways, bridges, viaducts and fills, including the approaches thereto, will be approximately one and one half million dollars (\$1,500,000.00) or more; and

WHEREAS, it is desirable that such roadways, bridges, viaducts and fills, including the approaches thereto, shall be constructed as speedily as possible so as to relieve the congested traffic now existing between the two said cities, and also to relieve the said County of

Dade of the burden of providing a roadway or roadways to carry the traffic across said Bay Biscayne; and

WHEREAS, it is desirable that such roadways, bridges, viaducts and fills, including approaches thereto, shall be constructed as speedily as possible and that such pledges shall be given by the State of Florida as will encourage investment of the capital needed for the construction thereof; NOW, THEREFORE,

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That any individual, individuals, corporation or corporations, now or hereafter created or doing business pursuant to the laws of the State of Florida, who or which shall, within ninety days after the passage of this Act and its approval by the Governor or after its becoming a law without the approval of the Governor, file in the office of the Secretary of State a plat delineating or showing a surveyed route or line of roadway definitely located and described over, across or through the waters and submerged lands of that part of Bay Biscayne lying to the north of the existing County Causeway connecting Miami and Miami Beach, Florida, shall, after securing permission from the War Department of the United States, have the right and is hereby granted the franchise and privilege to construct in accordance with plats, plans and specifications, approved by the War Department of the United States, maintain and operate a road and roadways and toll bridges with their connecting viaducts and fills appurtenant thereto over, across or through the waters and lands shown on such plat or plans; provided that nothing contained in this Act shall

be construed as a right to take private or public property for such purposes without due process of law and without just compensation.

Section 2. That any such individual, individuals, corporation or corporations so filing plats and plans of such surveys as set forth in Section 1 of this Act shall begin the actual work constructing of such roadway, roadways, bridges, viaducts and fills, including the approaches thereto, within ninety days from the filing of same, and shall have such roadway, roadways, bridges, viaducts and fills, including the approaches thereto, completed and ready for use within eighteen months after the passage of this Act.

Section 3. That a condition precedent to the taking effect of any grant or franchise authorized by this Act, the Legislature hereby reserves the right unto the County of Dade to purchase at any time within the term of any such grant or franchise, or at and after the expiration of any such grant or franchise, such roadway, roadways, bridge or bridges, viaduct or viaducts, approaches and other fills connected therewith, constructed in pursuance of the provisions of this Act. When the County of Dade elects to exercise its right to purchase under the provisions of this Act, not less than sixty days' notice of such election shall be given the owner or owners of such roadways, bridges, viaducts, approaches and fills, when a Board of Appraisers shall be appointed to determine the value thereof; one member of said Board shall be named by the purchaser, one by the owner or owners, and the two so named shall designate a third, the price agreed on by the Appraisers shall represent a fair consideration for the property to be purchased and shall be

the maximum amount required by the County of Dade to be paid therefor. No such election to purchase shall be binding on the owner or owners unless exercised within six months after the Board of Appraisers make their findings as to the value.

Section 4. That when the conditions of this Act as set forth in Sections 1 and 2 of this Act, have been complied with by any individual, individuals, corporation or corporations, then it shall become the duty of the Secretary of the State of Florida to issue a certificate covering a complete description of said roadways, viaducts, fills, bridges and approaches when and as constructed, said description to be furnished by the owners and certified to by a registered engineer, and shall state that such conditions as set forth herein have been complied with, and when such certificate shall be so issued it shall be filed in the office of the Clerk of the Circuit Court in and for Dade County. Said certificate shall authorize the exercise of such grant or franchise, as herein stated, for a term of twenty-five years from the date of its issuance. Should the duly qualified electors of the County of Dade fail to exercise their option to purchase as is given and reserved to them in Section 5 of this Act, then the owner or owners of said roads, bridges, viaducts and fills, including the approaches thereto, shall have the right to continue the operation of such roads, bridges, viaducts and fills, including the approaches thereto, as a toll roadway, and to operate the same with all the rights granted by this Act and subject to the provisions of this Act, for an additional term of twenty-five years, or until the duly qualified electors of the County of Dade shall, by proper action, elect to purchase the same, and shall

have paid to the owner or owners thereof such sum or sums as herein provided to be ascertained.

Section 5. That such roadway or roadways, bridges, viaducts and fills, including the approaches thereto, constructed, operated and maintained under the provisions of this Act, on which a toll is collected, shall be open for traffic at any and all times and maintained in a condition safe and suitable for travel; and the tolls to be collected for travel thereon shall not exceed the following schedule, to-wit:

Pedestrians, each either direction	\$.05
Individual on bicycle, either direction	.05
Individual on Motorcycle,	.10
One horse and rider,	.10
One horse, vehicle and driver, either direction	.15
Two horses, vehicle and driver, either direction	.25
One seated automobile and driver, either direction	.15
Two seated automobile and driver, either direction	.25
For hire car and driver, either direction	.50
Any other bus, taxi or jitney, and driver, either direction	.50
Each additional horse or person, either direction	.05

Sight seeing cars, 40 to 60 horse power, either direction	5.00
Sight seeing cars, 60 to 80 horse power, either direction	10.00
Sight seeing cars above 80 horse power, either direction	15.00
Each passenger on sight seeing cars, either direction	.05
One ton truck and driver, either direction	1.00
Truck and driver, either direction, \$1.00 per ton or fraction thereof, according to tonnage rating of trucks.	
Tractor and or one ton trailer, with driver, either direction	2.00
Tractor and or trailer, with driver, \$1.00 per ton or fraction thereof, according to tonnage rating of trailers, either direc- tion.	
Tractor with trailers and driver, Per aggregate ton or fraction there- of, according to tonnage rating of trailers, either direction.	1.00
All other vehicles, implements, machines of any nature or description whatsoever, \$2.00 per dead weight ton, either direc- tion.	

That the owner or owners may in the exercise of a

proper discretion refuse to permit such road or roads to be used by any vehicle, implement or machine of any nature or description whatsoever on said road or roads which may be destructive to the surface thereof.

Section 6. That any individual, individuals, corporation or corporations constructing such roadways, bridges, viaducts, fills, including the approaches thereto, across said Bay Biscayne, or between islands now existing or hereafter to be constructed, is or are hereby granted for a period of twenty-five (25) years from the date of issuance of the aforesaid certificate of the Secretary of the State of Florida, the exclusive right and franchise to maintain and operate bus or jitney transportation lines for the transportation and hauling of people and freight for hire over and across such roadways, bridges, viaducts and fills, including the approaches thereto, constructed in accordance with the provisions of this Act, and they are hereby granted the right and privilege to delegate such exclusive right or franchise to any bus line, bus lines, transportation company, or transportation companies engaged in such or similar business.

Section 7. That the assessments for taxation per mile of any part of any such roadway, roadways, bridges, viaducts and fills, including the approaches thereto, constructed by any such individual, individuals, corporation or corporations, over, across or through said waters of Bay Biscayne, as contemplated in this Act, whether constructed or maintained in connection with a toll bridge or other bridge, for passage of pedestrians and vehicles, or either, shall not exceed the average per mile assessment for taxation of any other roadway or roadways located on land in said Dade County, nor shall the assess-

ment per mile of any such roadway as contemplated by this Act be increased by reason of the construction and maintenance of the part thereof extending over or through the said waters of Bay Biscayne, notwithstanding the extra or disproportionate expense of the construction thereof above and beyond the expense of constructing such roadway or roadways upon land.

Section 8. That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed.

Section 9. That the provisions of this Act shall take effect from and after its passage and approval by the Governor or its becoming a law without the approval of the Governor.

STATE OF FLORIDA
OFFICE OF SECRETARY OF STATE.

I, H. Clay Crawford, Secretary of State of the State of Florida, do hereby certify that the above and foregoing is a true and correct copy of AN ACT to encourage and authorize the construction, maintenance and operation of roadways, bridges, viaducts and fills, including approaches thereto, over, across or through the waters and submerged lands of that part of Bay Biscayne lying North of the existing County Causeway, connecting Miami and Miami Beach, in Dade County, Florida; to maintain and operate the same as toll roads, regulating the operation thereof and prescribing tolls to be collected thereon; granting the right to construct thereon concrete arches, trestles, draw-bridges, docks, wharves, toll houses, toll

gates, depots and other necessary buildings; providing for the purchase of said roadways, when completed, by the County of Dade; and providing for a certificate of authority from the Secretary of State;

passed by the Legislature of Florida, Session 1925, as approved by the Governor and filed in this office;

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capitol, this the fourth day of June, A. D. 1925.

H. CLAY CRAWFORD
Secretary of State.

(Petitioner's Exhibit "B")

CHAPTER 21743—(No. 109).
COMMITTEE SUBSTITUTE FOR SENATE
BILL NO. 13

AN ACT to Amend Section 347.08 of the "Florida Statutes, 1941," Authorizing the State Railroad Commission to Regulate the operation of and Fix Tolls for Certain Toll Bridges and Causeways in the State of Florida.

BE IT ENACTED BY THE LEGISLATURE OF THE
STATE OF FLORIDA:

Section 1. That Section 347.08 of the Florida Statutes of 1941 entitled "Railroad Commission Authorized to Fix

Tolls and Regulate Operations of Certain Toll Bridges and Causeways More than Three and One-Half Miles in Length" be and the same is hereby amended so that it shall read as follows:

347.08. RAILROAD COMMISSION AUTHORIZED TO FIX TOLLS AND REGULATE OPERATIONS OF CERTAIN TOLL BRIDGES AND CAUSEWAYS. The Railroad Commission of the State of Florida may fix and regulate tolls, charges, uses and hours for keeping open for traffic, of any toll bridge or causeway which is now constructed, built, or that may hereafter be constructed or built over and across any river, bay, bayou or other body of water, in the State of Florida, and make rules and regulations respecting the same; provided, however, that the maximum rates, charges or tolls on any said toll bridge or causeway not exceeding, including the approaches thereto, four and one-half miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; twenty-five cents for each motorcycle ridden by one person and ten cents for each additional passenger; twenty-five cents for horse and rider; fifty cents for single team and driver and ten cents for each additional passenger; seventy-five cents for double team and driver and ten cents for each additional passenger; seventy-five cents for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles and ten cents for each additional passenger; loose driven horses and stock cattle, twenty cents per head; and provided further, that the maximum rates, charges or tolls on any said toll bridge or causeway or bridges which, including the approaches thereto, is more than four and

one-half miles and not exceeding six miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; twenty-five cents for each motorcycle ridden by one person and ten cents for each additional passenger; fifty cents for horse and rider; fifty cents for single team and driver and ten cents for each additional passenger; seventy-five cents for double team and driver and ten cents for each additional passenger; one dollar for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed the double rate for automobiles; loose driven horses and stock cattle twenty-five cents per head; and provided, further, that the maximum rates, charges or tolls on any said toll bridge or causeway or bridges which, including the approaches thereto, is more than six miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; fifty cents for each motorcycle ridden by one person and ten cents for each additional passenger; fifty cents for horse and rider, seventy-five cents for single team and driver and ten cents for each additional passenger; one dollar for double team and driver and ten cents for each additional passenger, one dollar twenty-five cents for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles; loose driven horses and stock cattle, twenty-five cents per head;

Provided further that in regulating tolls and charges for the use of such toll bridges or causeway not exceeding, including the approaches thereto, four and a half

miles in length, the Railroad Commission shall also fix reasonable rates to be charged: (1) Busses for the use of such toll bridge or causeway, and (2) for annual passes, emblems or permits for passenger automobiles and for trucks over such toll bridge or causeway for persons, firms or corporations desiring the right to the unlimited annual use of such toll bridge or causeway. Nothing in this Act shall be construed to interfere with the rights of any person entitled to free passage over any bridge or causeway by virtue of any covenant running with the land.

Provided, however, that this section shall have no application to toll bridges that may, after June 6, 1927, have been or be constructed by any county, or any political subdivision of any county, or to any toll bridge constructed and operated under any franchise or license granted by the county commissioners of any county.

(Petitioner's Exhibit "C")

CHAPTER 347. FERRIES, TOLL BRIDGES, DAMS, AND LOG DITCHES

347.01 County commissioners may grant license

The county commissioners of the several counties may grant leave to applicants, upon the conditions provided in this chapter, to establish ferries, toll bridges, mills and dams, and log ditches, upon and across the rivers and streams of their respective counties, which license shall

continue in force for a time to be specified therein by said board not exceeding ten years.

317.02 Notice of application

Any person desiring the benefits of Sec. 317.01 shall advertise in a newspaper published in the county wherein the privilege is to be granted, or if there be no newspaper published in said county, in a newspaper published in the adjoining or nearest county thereto; and shall also post in three conspicuous places in said county notice of his intention to apply to the county commissioners for leave, specifying the object of his application to the commissioners aforesaid, which application shall be in writing, particularly describing the river or stream, and locality thereupon, with the width thereof, and the depth of water where he shall desire to erect or establish a mill, dam, bridge, ferry or log ditch as aforesaid.

317.03 Owner of land to have preference for ferry or toll bridge

No such license to establish a ferry or toll bridge shall be granted to any person other than the owner of the land through which the highway adjoining the ferry or toll bridge shall run, unless such owner shall consent thereto or shall neglect to apply for such license, after notice as aforesaid.

317.04 Commissioners may regulate

The board of county commissioners, when they shall grant any license to keep a ferry or toll bridge, shall

order and direct the rates of ferriage or toll which the person licensed may charge and may, from time to time thereafter during the continuance of such license, alter such rates, and they may also direct what and how many hours each day such person shall attend his ferry or bridge, which hours shall be at least from daylight till dark, and may direct how long persons desiring to be crossed may be detained.

347.05 Bond

Every person anpplying for such license for a ferry or toll bridge, shall, before the same shall be granted, give bond in a sum to be fixed by the county commissioners, not less than two hundred dollars, with such sufficient sureties as the board shall approve, conditioned to faithfully keep such bridge in good repair, or attend such ferry with such and so many safe and convenient boats, and so many men to work the same, together with such sufficient implements therefor, and to perform the duties of such ferry or toll bridge, during the several hours in each day and at such several rates as the said board shall from time to time order and direct, which bond shall be filed with the clerk of said board.

347.06 Certificate of license

Whenever an application is granted under Sec. 347.01, the clerk of the board of county commissioners shall issue his certificate under seal, specifying the privileges therein granted, for which he shall receive the fees prescribed by law for like services.

347.07 License on waters between counties

Whenever the waters over which any toll bridge or ferry may be used shall divide two counties, a license obtained in either of the counties shall be sufficient to authorize the person obtaining the same to transport and pass persons, goods, wares, and merchandise and effects to and from either side of said waters; provided, that the rate of toll be fixed by the county commissioners of each county.

347.08 Railroad commission authorized to fix tolls and regulate operation of certain toll bridges and causeways more than three and one-half miles in length

The railroad commission of the State of Florida may fix and regulate tolls, charges, uses and hours for keeping open for traffic, of any toll bridge or causeway which, including the approaches thereto, is more than three and one-half miles in length now constructed, built, or that may hereafter be constructed or built over and across any river, bay, bayou or other body of water, in the State of Florida, and make rules and regulations respecting the same; provided, however, that the maximum rates, charges or tolls on any said toll bridge or causeway not exceeding, including the approaches thereto, four and one-half miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; twenty-five cents for each motorcycle ridden by one person and ten cents for each additional passenger; twenty-five cents for horse and rider; fifty cents for single team and driver

and ten cents for each additional passenger; seventy-five cents for double team and driver and ten cents for each additional passenger; seventy-five cents for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles and ten cents for each additional passenger; loose driven horses and stock cattle, twenty cents per head; and provided further, that the maximum rates, charges or tolls on any said toll bridge or causeway or bridges which, including the approaches thereto, is more than four and one-half miles and not exceeding six miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; twenty-five cents for each motorcycle ridden by one person and ten cents for each additional passenger; fifty cents for horse and rider; fifty cents for single team and driver and ten cents for each additional passenger; seventy-five cents for double team and driver and ten cents for each additional passenger; one dollar for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed the double rate for automobiles; loose driven horses and stock cattle, twenty-five cents per head; and provided further, that the maximum rates, charges, or tolls on any said toll bridge or causeway or bridges which, including the approaches thereto, is more than six miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; fifty cents for each motorcycle ridden by one person and ten cents for each additional passenger; fifty cents for horse and rider; seventy-five cents for single team and driver and ten cents for each additional passenger; one dollar

for double team and driver and ten cents for each additional passenger; one dollar twenty-five cents for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles; loose driven horses and stock cattle, twenty-five cents per head; Provided, however, that this section shall have no application to any bridge or bridges now or hereafter constructed or operated when the maximum rate or rates or toll are fixed in the act or law granting the franchise to construct and operate the same, or to toll bridges that may, after June 6, 1927, have been or be constructed by any county, or any political subdivision of any county, or to any toll bridges to be constructed and operated under any franchise or license granted by the county commissioners of any county.

347.09 Same; driven livestock; excursion rates

All loose driven horses and stock cattle crossing said bridge shall, at all times, be under full control of proper drivers to prevent stampeding and keeping them within a walk on said bridge, and no lot, at one time driving, shall exceed fifty in number. They shall also be crossed late in the evening or early in the morning at such an hour as shall be prescribed by the agent or owner of said toll bridge, causeway or bridges, so as not to interfere with the day traffic.

The owner of such toll bridge may establish commutation or excursion rates lower than the regular schedule of prices prescribed in Sec. 347.08.

347.10 Same; exercise of powers by railroad commission

The railroad commission shall have and exercise all the powers respecting the enforcement of its orders, rules and regulations made under the provisions of Secs. 347.08-347.10 which it has or may by law exercise, for the enforcement of its orders, rules and regulations respecting railroads.

347.11 Franchise for certain bridges, etc. to be granted by railroad commission

The granting power and control, for the purpose of enfranchising persons, firms and corporations, public and private, to build, construct, establish, operate and maintain bridges, causeways, tunnels, toll highways and ferries upon, over, across, or under all bays, inlets, bayous, lagoons, and sounds, and the beds and bottoms thereof, classifiable as state lands, submerged or otherwise, or over lands or waters where the grantee shall acquire the title or proprietary rights therein by the exercise of the power of eminent domain or otherwise, bordering on and connecting with the Gulf of Mexico, and making up one continuous expanse and body of water or land and water, and lying within the territorial limits of more than one county of this state, is vested in the railroad commission of the State of Florida, to be exercised upon the terms and conditions hereinafter provided; except none of the provisions of Secs. 347.11-347.18 shall apply to any ferries, toll bridges or tunnels operating or to be operated under, on or above any of the rivers in the State of Florida.

347.12 Terms of franchise granted by railroad commission

The franchise rights provided for in Sec. 347.11 shall

be granted, to continue in force for a period of fifty years, and shall be an exclusive franchise over, under or across the body of water covered by said franchise for a distance of three and one-half miles along the shore line of said body of water in each direction from each terminus of the bridge, causeway, tunnel, toll highway or ferry, as the case may be; and any person, firm or corporation which shall be granted a franchise as contemplated in Secs. 347.11-347.18 for either a bridge, causeway, tunnel, toll highway or ferry over, under or across any body of water, as described in said sections, shall be entitled to the exclusive right to a franchise over, under, or across said body of water within the limits above described for any of the other purposes or means of transportation, as described in Sec. 347.11 subject only to the power and control of the railroad commission of the State of Florida to determine the necessity and public convenience for the additional means of transportation.

347.13 Additional rights to franchise holders under former act

There is granted to and conferred upon all persons to whom franchises were granted under chapter 13884, acts 1929, all of the additional rights, powers and privileges enumerated in Sec. 347.12, the same as though the said additional rights, powers and privileges were included in said chapter 13884 and in the franchises heretofore granted thereunder.

347.14 Conditions upon which franchise is to issue; regulation by railroad commission; free passage; eminent domain

Such franchise rights may be given by said commission after application therefor in writing, upon the following conditions:

(1) If the application relates to navigable water, such applicant must exhibit to the commission with his application, the approval thereof from the department of the federal government exercising the dominant power of the congress of the United States of America, over the navigable waters of the said United States, and in the absence thereof said application shall not be received nor admitted to file.

(2) The intention to make such application shall be advertised in a newspaper of general circulation published in each of the counties wherein the privilege is to be granted, for a period of four full weeks, once a week prior to presenting same, or if there be no newspaper published in said counties, or either of them, then such advertisement shall be circulated by posting in three conspicuous places therein, one of which shall be at the front door of the court house of the county, four full weeks prior to presenting same.

(3) The contents of the notices declaring such intention shall describe the locality wherein the privilege is sought, and exactly the nature, extent, and character of such privilege.

(4) The railroad commission of the State of Florida, before making any award of franchise rights under Secs. 347.11-347.18, shall give written notice to the board of county commissioners of each county affected, through the chairman of such board, of the pendency of any ap-

plication hereunder, at least four weeks in advance of the commission's final action thereon.

(5) The grantee of such privilege, as conditions precedent to the effectiveness of the grant, shall furnish to the commission one bond in a sum of not less than five thousand dollars and not more than fifteen thousand dollars, to be approved by said commission, conditioned for the actual beginning of operations in the exercise of the privileges granted, within not less than twelve months from the time of the granting of same; and shall furnish a like bond in a sum of not less than five per cent and not more than ten per cent of the total estimated costs of construction and equipment of its works, and conditioned for the completion and equipment of such works, within such time as may be prescribed in the discretion of the commission, but not to be longer than five years, provided that the time element in the condition of this second bond may be in the discretion of the commission for good cause extended. The bonds in this paragraph provided for shall be made payable to the governor of the State of Florida for the use and benefit of the state road department and all monies collected thereunder shall be paid to the state treasurer of the State of Florida for the use of the said state road department.

(6) The said railroad commission shall have control of the use and enjoyment of such privilege or privileges, by the grantee thereof, in the fixing and prescribing of any tolls to be charged thereunder; and shall have the power to make and shall make rules and regulations, controlling and governing the grantee, in the use of the fran-

chise rights, in Secs. 347.11-347.18 contemplated, so as to safeguard, promote, and protect the public weal and interest involved thereunder; provided that no tolls shall be charged or collected for the use of any toll highways or ferries contemplated under said sections by troops, federal or state, fire departments, police officers in performance of their official duties, or emergency ambulances.

(7) The grantee of any franchise under said sections shall have the right to exercise the power of eminent domain, in acquiring approaches to its structure of ferries, from shore lines, and to connect with streets or public roads, to the same extent and in the same manner, as now exists with respect to the establishment of state or county highways.

(8) Applications for franchise under said sections shall be considered by the railroad commission of the State of Florida and determined in the respective order or priority in which they are filed, and in the awarding thereof by said commission, the interests, rights, accommodation and public convenience of the localities and communities involved, shall be adequately protected and safeguarded; provided, however, that no franchise shall ever be granted under the provisions of said sections, the exercise of which would cause the lowering by any department of the United States government, of the classification of any port in the State of Florida.

347.15 Due process of law required in preemption

All easements and proprietary rights, of the waters and lands contemplated in Secs. 347.11-347.18 incident to

riparian holdings, and vested in private owners, are reserved in the owners thereof, to be preempted only after due process of law.

347.16 Termination of franchise

The franchise rights contemplated by Secs. 347.11-347.18, when granted within the purview hereof, shall continue in such grantee, his personal representatives, successors or assigns for the full term or period thereof, unless otherwise terminated by operation of law; and if, before its expiration, legal termination shall occur (or upon its expiration) then the properties, construction and equipment and all easement right of the grantee shall pass to and become the properties of the State of Florida for the use and benefit of the state road department.

347.17 Powers of railroad commission

For the purpose of exercising the control and custody, contemplated under Secs. 347.11-347.18, the railroad commission of the State of Florida is vested with all its existing powers, judicial and otherwise, such power to be exercised in conformity with existing laws, for the enforcement and administration thereof.

347.18 Unauthorized bridges, etc., prohibited

No person, firm or corporation, public or private, not authorized by the provisions of Secs. 347.11-347.18 shall be permitted to build, construct, establish, operate or maintain, any bridge, causeway, tunnel, toll highway or

ferry, upon, across, over or under the lands or waters contemplated by or within the purview of said sections except that none of the provisions of said sections shall interfere with any existing toll bridge franchise.

347.19 Militia and clergymen exempt from paying tolls

Any person belonging to the military forces of the state going to or returning from any parade, encampment, drill, muster, or other military service or meeting which he may be required to attend, if he is in uniform, presents an order for duty, or such other proper identification to be prescribed by the adjutant general, and all persons driving automobiles or other vehicles belonging to the military department of the state of Florida used for transporting military personnel, stores and property, when properly identified shall, together with any such conveyance and military personnel and property of the state in his charge, be allowed to pass free through all toll gates and over all toll bridges and ferries in this state.

Clergymen and preachers of the gospel shall be allowed to pass free over all toll bridges and ferries in this state.

A copy of this section shall be posted at each toll bridge and on each ferry.

347.20 Vested rights not impaired

Nothing in this chapter shall affect or impair any right or privilege belonging to any individual or cor-

poration by virtue of any law of this state.

347.21 County commissioners to grant franchise

The county commissioners of any county in this state, whenever it shall have been made to appear to them that the convenience of the public requires the maintenance of a ferry for teams and passengers operated on regular schedules at frequent intervals across any river between any two points on opposite sides of the river in the same county, shall by resolution, grant a leave, license and franchise for the establishment, maintenance and operation of such ferry by a grantee or grantees named in the resolution, from a street or a public road on one side of the river to a street or a public road on the other side of the river; which leave, license and franchise shall vest in and be enjoyed by the grantee or grantees and the heirs, successors, and assigns thereof for the terms and on the conditions as in Secs. 347.22-347.25 provided. The word "grantee," as used in said sections, shall include the heirs, successors and assign of the grantee, and the word "franchise" shall include leave, license, and all rights and privileges pertaining to ferries.

347.22 Condition under which franchise granted

Such leave, license and franchise, for the maintenance and operation of such ferry as provided in Sec. 347.21, shall be given and granted by resolution upon the following terms and conditions:

- (1) The grantee of such leave, license and franchise, shall before the taking effect of such leave, license

and franchise, give to the county a good and sufficient bond in the sum of five thousand dollars, to be approved by the county commissioners, conditioned for the establishment, maintenance and operation of a ferry of character to meet the reasonable necessities of the public on regular schedule at such frequent intervals from each side of the river with a ferry boat suitable and safe for the transportation of passengers, vehicles and teams during the hours and on the schedules as fixed by the provisions of the resolution of the board of county commissioners granting the franchise. The county commissioners shall in and by the resolution giving and granting such franchise fix the schedule to be observed and the rate to be charged for ferriage, and the character and capacity of boats, and make such other regulations as may to them appear to be reasonable, to be in force and effect until changed as hereinafter provided.

(2) Such franchise, unless adjudged by the courts forfeited for failure to comply with the terms and conditions thereof, shall run and continue for the full term of and period of fifteen years, and thereafter until the county commissioners shall have terminated the said franchise in the manner herein provided. No leave, license or franchise shall be granted to any person for the operation of any ferry across such river from or to any point within one mile of either terminus of such ferry as fixed by the resolution granting the franchise, and no other ferry shall be established or maintained within one mile thereof; and no such leave, license or franchise shall be so given or granted as to impair or depreciate the value of any vested right or privilege of any person or corporation operating at the time of the

passage of this chapter, a ferry for the transportation of passengers and teams at frequent and regular intervals across a river under the provisions of any resolutions of a board of county commissioners, granted under the provisions of existing laws.

(3) At the end of the third year after granting such leave, license or franchise, and at the end of each period of three years thereafter, the county commissioners and the grantee shall each have the right, by having given notice of the intention so to do thirty days prior to any such recurring period of three years, to have arbitrated with the other party any question or questions as to the reasonableness of any rate or rates allowed or charged, or as to the character and reasonableness or frequency of the service required or given, or as to any other matter or thing pertaining to the maintenance or operation of such ferry. For the arbitration of any such question or questions, the county commissioners shall name one arbitrator, and the grantee of the franchise shall name the other, and the two arbitrators shall, if possible, after investigation, decide the question or questions submitted to them, and render to the county commissioners and to the grantee a written decision signed by them. If the two arbitrators so named shall be unable to agree as to a proper decision on any question or questions, they shall mutually agree upon a third disinterested party, who shall investigate the contested question or questions, and the finding of two of the arbitrators shall then be a decision of the arbitrators. All parties shall be bound, and shall abide by and carry out for the ensuing three years the decision of the arbitrators. The county commissioners and the grantee of such franchise

shall have the right at any time, without arbitration, to make by resolution of the county commissioners, approved by the grantee, any arrangement that they may deem mutually advantageous to all concerned affecting such ferry service, subject, however, to subsequent change by arbitration at the times and as herein provided.

(4) The county commissioners of any county, wherein such ferry shall have been operated as herein provided, shall have the right to have submitted to the voters of the county, at the general election next preceding the expiration of the said term of fifteen years, the question as to whether or not the county commissioners shall purchase the property used and operate the ferry, and if the majority of the voters voting on the subject shall have voted for the purchase and operation of the ferry by the county, then the county commissioners and the grantee of the franchise shall each name an arbitrator, and the two arbitrators so named shall name a third, a disinterested person of high standing and integrity, and the three arbitrators, or two of them, if the three cannot agree, shall, after a thorough investigation, fix the amount to be paid by the county to the grantee; and the county commissioners shall thereupon pay to the grantee the amount fixed by the arbitrators, or a majority of them, and shall receive from the grantee a conveyance of all its property used for ferry purposes; and the county commissioners shall operate such ferry so long as its operation by them shall appear practicable, and the grantee of the franchise shall not thereafter, so long as the said ferry shall be operated by the county, operate any such ferry, and all

rights of the grantee to operate such ferry shall, during the time of the operation thereof by the county, be withdrawn.

Should the electors of the county at such election fail to approve the purchase and operation of such ferry, or should the county commissioners for any reason fail to make such purchase, the grantee shall have the right to continue the operation of such ferry with all the rights hereby granted and subject to all of the provisions of this chapter as to arbitration of questions of service, charges, etc., for an additional term of ten years, and until the county shall, by vote of its electors, have determined to purchase and operate such ferry, and shall have paid to the grantee the amount fixed by arbitration in the manner above provided.

317.23 No person to maintain ferry unless authorized

No person not authorized under the provisions of this chapter shall maintain any ferry for transporting persons or property for profit across any river from any point within one mile of a terminus of any ferry maintained under the provisions of this chapter to any point within one mile of such terminus.

317.24 Transporting persons for hire within one mile of ferry; penalty

Any person who shall for profit or hire transport across any river from any point within one mile of any terminus of any ferry maintained under the provisions of law to any point within one mile of a terminus of any

such ferry, unless duly authorized by law so to do, shall be punished by fine not exceeding twenty dollars for the first offense and by fine not exceeding fifty dollars, or imprisonment not exceeding five days for each subsequent offense.

317.25 Maintaining illegal ferries; penalty

Whoever maintains any ferry for transporting across any river, stream or lake, persons, goods, chattels or effects for profit or hire, unless duly authorized according to law, shall be punished by fine not exceeding twenty dollars. When any offense mentioned in this section is committed on streams dividing counties the offender may be prosecuted in either county.

